

HOUSE BILL 1441
By Overbey

AN ACT to amend Tennessee Code Annotated, Title 29, Chapter 26, Part 1, relative to malpractice.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 29-26-119, is amended by deleting the section in its entirety and by substituting instead the following:

§ 29-26-119.

(a) In any malpractice action in which liability is admitted or established, the damages awarded may include (in addition to other elements of damages authorized by law) actual economic losses suffered by the claimant by reason of the personal injury including, but not limited to the cost of reasonable and necessary medical care, rehabilitation services and custodial care, the loss of services and the loss of income. Such damages shall be awarded only to the extent that such costs are not paid or payable and such losses are not replaced, or indemnified in whole or in part, pursuant to:

(1) The United States social security act;

(2) Any state or federal income disability or worker's compensation act;

(3) Any health, sickness or income-disability insurance;

(4) Any accident insurance that provides health benefits or income-disability coverage; or

(5) Any contract or agreement of any group, organization, partnership or corporation to provide, pay for or reimburse the cost of medical, hospital, dental or other health care services.

The defendant may introduce evidence of any such costs paid or payable as a benefit to the plaintiff; however, if the defendant elects to introduce such evidence, then the plaintiff may introduce evidence of any amount paid or contributed by the plaintiff to secure the right to receive such benefits.

(b) No source of collateral benefits, identified within subsection (a), shall recover any amount against the plaintiff nor shall it be subrogated to the rights of the plaintiff against a defendant.

(c) In any malpractice action in which liability is admitted or established, the damages awarded may include (in addition to other elements of damages authorized by law) noneconomic losses; provided, however, damages for such noneconomic losses shall not exceed two hundred fifty thousand dollars (\$250,000).

(d)

(1) In any malpractice action, the trial court shall, at the request of either party, enter a judgment ordering that money damages or its equivalent for future damages of the judgment creditor be paid in whole or in part by periodic payments rather than by a lump-sum payment if the award equals or exceeds fifty thousand dollars (\$50,000) in future damages. In entering a judgment ordering the payment of future damages by periodic payments, the court shall make a specific finding as

to the dollar amount of periodic payments that will compensate the judgment creditor for such future damages. As a condition to authorizing periodic payments of future damages, the court shall require the judgment debtor who is not adequately insured to post security adequate to assure full payment of such damages awarded by the judgment. Upon termination of periodic payments of future damages, the court shall order the return of this security, or so much as remains, to the judgment debtor.

(2)

(A) The judgment ordering the payment of future damages by periodic payments shall specify the recipient or recipients of the payments, the dollar amount of the payments, the interval between payments, and the number of payments or the period of time over which payments shall be made. Such payments shall only be subject to modification in the event of the death of the judgment creditor.

(B) If the court finds that the judgment debtor has exhibited a continuing pattern of failing to make the payments, as specified in item (A), then the court shall find the judgment debtor in contempt of court and, in addition to the required periodic payments, shall order the judgment debtor to pay the judgment creditor all damages caused by the failure to make such periodic payments, including court costs and attorney's fees.

(3) Money damages awarded for loss of future earnings shall not be reduced or payments terminated by reason of the death of the judgment creditor, but shall be paid to persons to whom the judgment creditor owed a duty of support, as provided by law, immediately prior to

the judgment creditor's death. In such cases the court that rendered the original judgment, may, upon petition of any party in interest, modify the judgment to award and apportion the unpaid future damages in accordance with this subsection.

(4) Following the occurrence or expiration of all obligations specified in the periodic payment judgment, any obligation of the judgment debtor to make further payments shall cease and any security given, pursuant to subdivision (1) shall revert to the judgment debtor.

(5) As used in this subsection:

(A) "Future damages" includes damages for future medical treatment, care or custody, rehabilitation services, loss of future earnings, loss of bodily function, or future pain and suffering of the judgment creditor.

(B) "Periodic payments" means the payment of money or delivery of other property to the judgment creditor at regular intervals.

SECTION 2. Tennessee Code Annotated, Section 29-26-120, is amended by deleting the language "not to exceed thirty-three and one-third percent ($33\frac{1}{3}\%$) of all damages awarded to the claimant." and by substituting instead the following:

not to exceed the following limitations:

(1) Forty percent (40%) of the first fifty thousand dollars (\$50,000) of damages recovered;

(2) Thirty-three and one-third percent ($33\frac{1}{3}\%$) of the next fifty thousand dollars (\$50,000) recovered;

(3) Twenty-five percent (25%) of the next five hundred thousand dollars (\$500,000) recovered;

(4) Fifteen percent (15%) of any amount on which the recovery exceeds six hundred thousand dollars (\$600,000).

Such limitations shall apply regardless of whether the recovery is by means of settlement, arbitration or judgment, and regardless of whether the person for whom the recovery is made is a responsible adult, infant or person of unsound mind.

If periodic payments are awarded to the plaintiff pursuant to §29-26-119, then the court shall place a total value on such payments based upon the life expectancy of the plaintiff and shall utilize such total value in computing the total award from which attorney's fees are calculated under this section.

SECTION 3. Tennessee Code Annotated, Title 29, Chapter 26, Part 1, is amended by adding the following language as new, appropriately designated sections:

§ 29-21-126.

(a) Any contract for medical services that contains a provision for binding arbitration of any dispute arising from alleged professional negligence of a health care provider shall have such provision as the first article of the contract and shall be expressed in the following language:

It is understood that any dispute as to medical malpractice (that is as to whether any medical services rendered under this contract were unnecessary or unauthorized or were improperly, negligently or incompetently rendered), will be determined by submission to binding arbitration in accordance with the rules of the Tennessee supreme court, and not by a lawsuit or resort to court process except as the rules of the Tennessee supreme court may provide for judicial review of binding arbitration proceedings. Both parties to this contract, by entering into it, are giving up their constitutional right to have any such dispute decided in

a court of law before a jury, and instead are accepting the use of binding arbitration.

(b) Immediately before the signature line provided for the individual contracting for the medical services, the following language must appear in at least 10-point bold red type:

NOTICE: BY SIGNING THIS CONTRACT YOU ARE AGREEING TO HAVE ANY ISSUE OF MEDICAL MALPRACTICE DECIDED BY NEUTRAL ARBITRATION AND YOU ARE GIVING UP YOUR RIGHT TO A JURY OR COURT TRIAL. SEE ARTICLE I OF THIS CONTRACT.

(c) Once signed, such a contract governs all subsequent open-book account transactions for medical services for which the contract was signed until or unless rescinded by written notice within thirty (30) days of signature. Written notice of such rescission may be given by a guardian or conservator of the patient if the patient is incapacitated or a minor.

(d) Where the contract is one for medical services to a minor, it shall not be subject to disaffirmance if signed by the minor's parent or legal guardian.

(e) Such a contract is not a contract of adhesion, nor unconscionable nor otherwise improper, where it complies with subsections (a), (b) and (c) of this section.

(f) For the purposes of this section:

(1) "Health care provider" means any person or entity, providing health-related services, regulated by the state pursuant to title 63 or title 68, chapter 11;

(2) "Professional negligence" means a negligent act or omission to act by a health care provider in the rendering of professional services, which act or omission is the proximate cause of a personal injury or

wrongful death, provided that such services are within the scope of services for which the provider is licensed and which are not within any restriction imposed by the licensing agency or licensed hospital.

SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 5. This act shall take effect January 1, 2004, the public welfare requiring it.